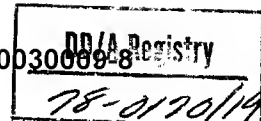


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OGC Has Reviewed

27 NOV 1978

DD/A Registry
File Pers-11

MEMORANDUM FOR: Director of Central Intelligence

VIA : Deputy Director for Administration
Deputy Director of Central Intelligence

FROM : James H. Taylor
Comptroller

SUBJECT : Headquarters Recreation Project—Phase III ☐

REFERENCE : Memo from Compt to DCI, dated 24 May 1978,
Same Subject

1. ☐ The Reference (copy attached) brought you up to date on the status of Phase III of the Headquarters Recreation Project, i.e., construction of tennis courts. At that time, you approved a recommendation that action on the Project be deferred pending approval of the Agency's 1979 appropriation. Our appropriation has now been approved, and the Congress did not take exception to the funds requested for additional facilities for the physical health and well-being of the Agency's employees. We believe this can be construed as approval to use appropriated funds for the Project, subject to concurrence of the General Counsel.

2. ☐ However, while the Congress did not question the funds included in our budget for recreational facilities, the Congress did impose a substantial reduction—for unspecified purposes—in General Support of \$2.1 million, along with other substantial and specific reductions in our 1979 Program. Given the reductions in our budget, and as noted previously in the Reference, our use of 1979 funds to construct tennis courts could raise questions in the Congress about the priority we attach to recreational facilities in comparison with activities more clearly aligned with our intelligence mission. Further, with the final selection of a site for the proposed tennis courts and the refinement of requirements (i.e., surface, lighting, GSA fees, etc.), the estimated cost to construct four tennis courts is now \$130 thousand—considerably in excess of the initial preliminary estimate of \$60 thousand (which was based on figures from a standard cost estimating handbook and the costs of tennis courts recently constructed by Fairfax County).

3. ☐ In the face of reductions in our 1979 Budget, the austerity measures being pursued by the Administration, and the outlook for

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our 1980 Program, we believe it would be ill-advised to divert some of our scarce funds for additional recreational facilities. We believe that you should defer indefinitely present plans for using appropriated funds to construct tennis courts on the Headquarters compound.



James H. Taylor

STATINTL

Attachment: As Stated

Distribution:

Original - Addressee w/att.

1 - DDCI w/o att.

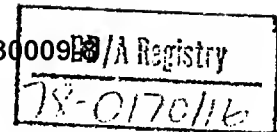
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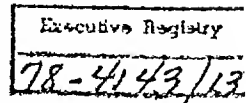
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24 MAY 1978



MEMORANDUM FOR: Director of Central Intelligence

VIA : Deputy Director for Administration
: Deputy Director of Central Intelligence

FROM : James H. Taylor
Comptroller

SUBJECT : Headquarters Recreation Project—Phase III

1. This responds to your note to Jack Blake and myself relative to getting permission to use appropriated funds for Phase III of the Headquarters Recreation Project, i.e., construction of tennis courts.

2. For your information, the background and action to date on the Project is summarized as follows:

a. Phase I (roadway, parking lot, access gate, and control equipment) was funded with appropriated funds, justified on the basis of physical security requirements. The original estimate for Phase I was \$15,700; but with refinement of the initial concept, design changes, and escalating costs, the final cost will be approximately \$39,000. Phase I should be completed in early July 1978.

b. Phase II (softball field, football/soccer field, basketball court, volleyball equipment, and possibly a handball court) was funded with Employee Activity Association funds. The existing schedule calls for completion by early August 1978.

c. Design work is under way for Phase III (tennis courts), but no formal action can be taken until a source of funds (about \$60,000 for four courts) can be identified. If funding could be identified and authorized immediately, the tennis courts might be ready for use late this year, but not much before.

3. There are three possible sources of funds for Phase III:

a. Employee Activity Association (EAA)

The EAA has already made \$50,000 available for the Project. These funds have been committed for Phase II.

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We understand that no additional EAA funds are available—at least in amounts that would be required for Phase III.

b. "Club Funds"

While there are sufficient "Club Funds" available, OGC, in an opinion dated 11 May 1978, has interposed objections to the use of such funds unless certain conditions are met. While it would be possible to comply with these conditions, the consensus is that to do so might subject the Agency to allegations of impropriety or criticism of our motives. Given the OGC position, we believe the advantages of using available "Club Funds" do not outweigh the possible risks involved.

c. Appropriated Funds

In an opinion dated 10 June 1977, OGC took the position that appropriated funds cannot be used for physical conditioning and recreational facilities in the absence of a specific authorization from the Congress. Presumably, this could be obtained through a request for reprogramming or as an integral part of our formal budget submission.

4. On the assumption that neither EAA nor "Club Funds" would be available, we included language in our 1979 budget submission which we believe should serve as the necessary request to the Congress to use appropriated funds for Phase III of the Headquarters Recreation Project. Assuming the Congress does not deny funds for this purpose, we could commit funds for the tennis courts in October of this year when our 1979 appropriation is available. There is one aspect of using 1979 appropriated funds which is a little awkward. The Congress will reduce our 1979 budget by an amount not yet determined. However, a reduction of at least \$1 million will be made in General Support, the category in which the tennis courts would be funded. Proceeding with the plan to construct the courts, given the reduction in General Support funds, may raise a question about the priority we attach to recreation facilities in comparison with activities more clearly aligned with our intelligence mission. On the other hand, \$60,000 is a very small amount of money within the total General Support program.

5. I recognize that there is a strong preference to proceed immediately with whatever action is necessary to get Phase III under way. Since neither the EAA nor "Club Funds" seems to be a viable source for the required funding, we apparently are left with the only remaining alternative—use of appropriated funds. Given the OGC position, we must seek Congressional approval to use 1978 funds. This would require a reprogramming request since no 1978 funds were budgeted for this purpose. If the Congress approves our request, we have no problem. If Congress denies our request, we could lose the funds involved, but more important is the impact such disapproval might have on our plans to follow through with Phase III in 1979. Congressional disapproval of our request in 1978 would clearly identify this as a sensitive item requiring,

in my opinion, a second request to Congress to proceed with the Project using the 1979 funds we budgeted for this purpose. A request to Congress now could jeopardize use of 1979 funds.

6. In view of the time required for necessary design and approvals, it is unlikely that the tennis courts would be available before winter even if we could immediately identify the needed funding. Thus the courts probably would see only minimum use before next spring. If we defer action until our 1979 appropriation is approved, we will have a strong basis for using appropriated funds for Phase III in view of the fact that such funds were included in our 1979 budget "for the establishment and maintenance of additional modest facilities for the physical health and well-being of the Agency's employees." It is possible that we should clear our plans with the Congress since we did not specifically state our intention to construct tennis courts. However, we probably could do this informally with Committee Staffs rather than through formal correspondence with the Chairmen of our Committees.

7. We recommend:

a. That formal action on Phase III of the Headquarters Recreation Project be deferred pending approval of the Agency's 1979 appropriation.

b. That, assuming no Congressional objection to the request in our 1979 budget for such facilities, you approve use of Agency funds for construction of four tennis courts at an estimated cost of \$60,000.

c. That the Office of Logistics be directed to take action as necessary to contract for construction as soon as possible after 1 October 1978 when 1979 funds become available.

STATINTL

STATINTL

APPROVED:



James H. Taylor

7a only - will relook at

Date: 26 MAY 1978

DISAPPROVED:

Director of Central Intelligence

Date:

Distribution:

Orig. - DCI (Return to O/Compt.)

1 - DCI

1 - DDCI

1 - DDA

*As possible advise
impacts for #1 in
ST*

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Use of Central Employee Activities Fund Monies for Headquarters
Physical Conditioning Facilities

78-4143/12

FROM:

John F. Blake
Deputy Director for Administration
7D 24 Hqs

EXTENSION

NO.

DDA 78-0170/15

DATE

15 May 1978

25X1A

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Deputy Director of Central Intelligence
2. 7D 6011 Hqs

Sir:

Executive Registry

78-4143/12

3. Director of Central Intelligence
4. 7D 5607 Hqs

Rec'd
17 May

5/31

The attached legal opinion states that CEAF funds (club funds) may be used for the construction of tennis courts if we make certain administrative adjustments to the regulations. Those adjustments can be made. In paragraph 2, however, the author of the opinion raises questions in rather strong language about the wisdom of this course of action. I believe you should very carefully weigh his words.

In the meantime, the Comptroller is working with OGC in endeavoring to answer your last raised question as to whether or not we could use appropriated funds. I have asked them to please expedite their work so that an answer can be given to you.

STATINTL

John F. Blake

Att:

DDA 78-0107/14

Distribution:

Orig RS - DCI via DDCI
1 - DDCI
1 - ER
1 - DDA

ADMINISTRATIVE INTERNAL USE ONLYOGC 78-3109
11 May 1978

MEMORANDUM FOR: Deputy Director for Administration

FROM :
Assistant General CounselSUBJECT : Use of Central Employee Activities Fund
Monies for Headquarters Physical Conditioning
Facilities.

1. This Office was informally asked to examine the propriety of utilizing Central Employee Activities Fund (CEAF) monies for the construction of physical conditioning facilities in the Headquarters compound. Attached is a memorandum prepared by the undersigned and approved by the General Counsel which sets forth conclusions with respect to the status of CEAF funds and the propriety of utilizing the funds as proposed. In summary, this memorandum concludes that:

- a. CEAF monies cannot be donated directly to the Agency (a determination that we have previously made with respect to the donation of EAA funds for similar purposes);
- b. while CEAF monies may properly be considered non-Governmental funds, the current practice of having the use and control of this fund vested solely in the DDA suggests that these funds have been transferred to the Agency for the use of the United States Government. If this interpretation were to prevail, the funds would have to be turned into miscellaneous receipts of the United States Treasury. We have, therefore, recommended that a semi-independent board be established, similar to that which exists under the State Department's Central Commissary, Mess and Recreational Fund, to control the utilization of these funds. The creation of such a board would, support our conclusion that CEAF monies are truly non-Governmental funds;

ADMINISTRATIVE INTERNAL USE ONLY

ADMINISTRATIVE INTERNAL USE ONLY

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- c. the interpretation of current Agency regulatory restrictions would prohibit the use of CEAF monies as contemplated; and, finally,
- d. the DCI, in coordination with GSA, may grant a non-Governmental organization a license to use land on the Headquarters compound for physical conditioning facilities. If the regulatory restrictions on the use of CEAF monies noted above are removed, the CEAF board (acting as the representative of all Agency employees) may then wish to donate certain sums to such an organization to assist in the construction of physical conditioning facilities.

2. Implementation of the proposal suggested in subparagraph 1(d) depends upon the elimination of regulatory provisions which presently restrict utilization of CEAF monies for the purpose contemplated. While there is no inherent legal difficulty in revising to eliminate such restrictions, we believe that such a revision raises certain policy questions which should be addressed by you and other senior Agency officials. These policy issues arise from the fact that CEAF monies are derived primarily from overseas personnel service and recreational activities, and that their use for construction of physical conditioning facilities at Headquarters may be viewed by Agency employees as a misuse of such funds. Such a view would be more strongly felt if it was determined that the Agency was not currently providing satisfactory physical conditioning and recreational facilities at our isolated overseas locations. The utilization of CEAF monies to build tennis courts at the Headquarters compound, while at the same time not providing for basic physical conditioning or recreational facilities overseas, would, in our view, subject the Agency to substantial outside criticism in addition to adversely impacting on the morale of Agency employees.

STATINTL

3. I am at your disposal in implementing any of the recommendations included in this memorandum.

STATINTL



Attachment

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ADMINISTRATIVE INTERNAL USE ONLY

MEMORANDUM FOR: General Counsel

STATINTL

FROM :
Assistant General Counsel

SUBJECT : Use of Central Employee Activities
Fund (CEAF) for Headquarters Physical
Conditioning Facilities

REFERENCES : A. Memo to DDS fm Acting Comptroller,
Subj: Establishment of Central Club
Fund to receive proceeds from Closed
Clubs, Messes and other facilities,
dtd 21 Nov 60.

B. OGC 60-1381, dtd 24 Oct 60.

C. OGC 61-1373, dtd 4 Oct 61.

1. In connection with an OGC re-examination of the funding for various phases of the program to improve the Headquarters physical conditioning facilities, a question has arisen concerning the legality of using the CEAF particularly with reference to building tennis courts. Following is a discussion of the status of this fund and an opinion concerning the legality of its existence and utilization.

2. I have concluded that it would not be legally objectionable for a non-Governmental organization to construct physical conditioning facilities on the Headquarters compound if such an organization is granted a license to use Federal property for that purpose. Further, I have concluded that CEAF monies are non-Governmental funds and their use to construct such facilities would not violate the proscription against augmenting appropriations, but would violate existing Agency regulations governing use of these funds

STATINTL

ADMINISTRATIVE INTERNAL USE ONLY

ADMINISTRATIVE INTERNAL USE ONLYLICENSE TO USE FEDERAL PROPERTY

3. Generally, the DCI, as head of the Agency, and GSA have authority to determine the utilization of property under their control. Thus, the Director may elect to grant a revocable license to use a portion of the compound area to a non-Governmental recreational association (perhaps EAA) for the construction of physical conditioning facilities. This revocable license agreement would permit only limited improvement in the property and provide that all such improvements would, upon termination of the license, become the property of the United States. The license would provide that the physical conditioning facilities would be available to all employees of the Agency, and not restricted to members of any particular organization. (See paragraph 6a of the proposed OMB circular containing policies for controlling the assignment of Federal real property to non-Federal activities - Tab 4)

4. The crucial question which must be answered prior to implementation of this proposal is who has control over granting licenses for use of the grounds¹ surrounding the Agency building. The answer to this question is not altogether clear. Under the Federal Property Management Regulations, 41 C.F.R. 101-17, such authority apparently rests in the General Services Administration. Historically, however, the Director has exercised substantial control over the utilization of Agency buildings and grounds by virtue of the unique security considerations which exist for our organization. Notwithstanding the conclusion as to which agency head may have the actual authority, it would appear appropriate to seek the approval and coordination of GSA in any event. If such concurrence is obtained and if the problem concerning our internal restrictions on the use of CEAF monies in [] can be resolved, the CEAF may then desire to establish a central employees recreational organization capable of obtaining such a license or initiate discussions with an existing organization, such as EAA, for the same purpose. If the second alternative is selected (i.e., EAA is granted the license) the CEAF may then elect to donate funds to EAA to assist in the construction of physical conditioning facilities on the licensed land.

THE NATURE OF CEAF

5. The CEAF is, in actuality, a Government account into which monies are deposited and withdrawn (see paragraph 5 of reference A). It has no members, officers, charters, or bylaws or any status as either an incorporated or an unincorporated entity. On 24 October 1960, this Office issued an opinion (reference B) which stated that we perceived no legal objection to the establishment of the CEAF.

^{1/} 101-17.003-4 defines Government-owned space as "space in buildings, or land incidental thereto, the title to which is vested...pursuant to existing agreement in the United States Government." (Emphasis added.)

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STATINTL

No statutory basis for establishing the fund was advanced, nor was any identified by this Office. (The Department of State since 1963 has had such statutory authority, 22 U.S.C. 1138, and has promulgated appropriate implementing regulations, one of which established a Central Commissary, Mess, and Recreational Fund [see tab 1].) In reference C this Office concurred in the revision of [] incorporating language concerning the CEAF. STATINTL

SOURCE OF FUNDS

6. The CEAF was established and continues to be augmented by the net profits of existing self-sustaining, personnel service or recreational activities and the net proceeds from such activities when terminated. [] STATINTL states, in pertinent part:

- (3) Amounts of accrued profits of self-sustaining activities reported in the annual fiscal year report that are determined by the Deputy Director for Administration as being excess to their current or foreseeable future needs will be transferred to the Director of Finance for deposit in the Central Employees Activities Fund.
- (4) Assets of any terminated self-sustaining activity will not be distributed to members. Net cash resulting from liquidation of any such activity will be transferred to the Director of Finance for deposit in the Central Employees Activities Fund.

The net profits or net proceeds after termination of Agency-operated² personnel service or recreational activities (as opposed to self-sustaining activities) are not deposited into the CEAF but, in accordance with [], are transferred to the Director of Finance for deposit in miscellaneous receipts. STATINTL The different treatment between self-sustaining and Agency-operated activities is undoubtedly based on the assumption that self-sustaining activities have repaid the Agency for all expenses incurred by the Agency as a result of the establishment or operation of its activities. The converse is true with respect to Agency-operated activities. Here the United States Government should properly receive whatever excess monies remain after the termination of the activity in order to recoup some of the expenses incurred in its establishment and operation. According to the Office of Finance, the CEAF has approximately \$100,000 in

^{2/} These activities are similar to the Department of State's emergency commissary, or mess services authorized by 22 U.S.C. 138(a).

current assets; some of which has been transferred, "in trust," to EAA in order to enable the money to be converted into certificates of deposit earning interest rather than being held in a non-interest bearing Agency account. The interest is redeposited in the CEAF.

CHARACTERIZATION OF CEAF MONIES

7. The characterization of the CEAF funds depends upon the status of personnel service and recreational activities. If personnel service and recreational activities are, in reality, merely extensions of the Agency, such funds must then be considered a "collection"³ which, upon acceptance by the Agency, become public monies. If these activities can be considered non-appropriated fund activities, the monies from such activities are not the property of the United States Government and should not be considered public monies. Kenny v. U.S., 62 Ct. Cl. 328 (1926), 43 Comp. Gen. 341 (1963).

STATUS OF AGENCY-OPERATED AND SELF-SUSTAINING PERSONNEL SERVICE AND RECREATIONAL ACTIVITIES

8. The exact status of Agency self-sustaining personnel service and recreational activities is not entirely clear. On the one hand [] sets forth Agency policy and general responsibilities relating to the establishment, operation, and termination of personnel service and recreational activities. It provides that the chiefs of field installations, the Director of Finance, and the Deputy Director for Administration will supervise the activities within their particular fields of expertise. For example, [] provides that:

The Deputy Director for Administration will approve or disapprove recommendations for the creation of new activities, the expansion of existing facilities, the advancing of Agency funds for new or expanded activities, the transfer of a portion of excess accrued profits to the Central Employees Activities Fund, and the use of the moneys in this fund. (Emphasis added.)

One of the few authorities which appeared to be lacking is the specific authority to terminate a personnel service or recreational activity. Arguably, that authority is an inherent component of the rights perviously enumerated.

9. In a recent case, OGC 76-1800, dated 8 March 1976 (tab 2), this Office had the occasion to examine the status of such activities. The issue involved the authority to transfer Government property to personnel service and recreational activities for use by association members. After an examination of the degree of control

3/ As the term is used in Title 7, Fiscal Procedures, GAO Policy and Procedures Manual for Guidance of Federal Agencies.

ADMINISTRATIVE INTERNAL USE ONLY

and supervision exercised by the Agency, we determined that the club in question could be considered an Agency activity for the purpose of permitting it to receive Government property.

10. On the other hand, each of these particular club activities is an identifiable entity. While the form of each activity may vary somewhat, they are normally organized under a charter/bylaw system which charge dues to offset operating costs incurred by the club. The day-to-day supervision and management of the activity is carried on by managers or officers selected by club members to perform such functions. Decisions regarding the particular activities of the club, such as the hiring of employees and the expenditure of funds, are carried out by the club entity. In addition, it is clear to the undersigned that employees who participate in such organizations do so on the belief that membership dues are retained by the club organization (or some central fund) and remain available for use by their club or similar club activities.

11. After balancing these factors, I believe it is possible to assert that self-sustaining personnel service and recreational activities are non-Governmental activities provided that direct Agency control over clubs is reduced and the DDA's carte blanche control over the CEAF is terminated as suggested in paragraph 15, infra.

DISPOSITION OF MONIES RECEIVED FROM SELF-SUSTAINING PERSONNEL SERVICE AND RECREATIONAL ACTIVITIES

12. Section 484 of Title 31 of the United States Code provides that:

The gross amounts of all moneys received from whatever source for the use of the United States--- shall be paid by the officer or agent receiving the same into the treasury, as early a day as possible, without any abatement or deduction.... (Emphasis added.)

Officers or agents who neglect or refuse to comply with the provisions of this section, are subject to removal from office and to forfeit to the United States any share or part of the monies withheld to which they might otherwise be entitled (31 U.S.C. § 490). The dictates of Congress concerning the deposit of public monies is further emphasized in section 495 of Title 31 of the United States Code and provides that:

Every person who shall have moneys of the United States in his hands or possession, and disbursing officers having moneys in their possession not required for current expenditures, shall pay the same to the Treasurer or some public depositary of the United States, without delay, and in all cases within thirty days of their receipt....

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Paragraph 12.2 of Title 7 of the General Accounting Office Manual for Guidance to Federal Agencies provides that:

All collections received by agencies and accountable officers shall, insofar as possible, be deposited daily with an authorized depository....

13. It is clear from the cited authorities that all monies received from whatever source for use of the United States must be deposited into miscellaneous receipts. The present issue is whether the receipts from non-Governmental personnel service and recreational activities presently deposited in the Agency's CEAF account constitute monies received for the use of the United States. As presently configured, the CEAF is controlled by the United States Government by virtue of the DDA's control over the maintenance and disposition of the funds. While such a situation may not be legally improper, we believe it to be unwise, since it supports the argument that the monies are received for use by the United States as opposed to being received by a non-Governmental central club fund.⁴

14. Secondly, history suggests that neither the Agency nor employee association members contemplated that excess funds would become public monies and be deposited in the U.S. Treasury. Rather, it seems clear that dues and profits were paid by individual employee association members for use by their activity or similar successor organizations. It was recognized that self-sustaining personnel service and recreational activities would be required to repay any Government loans (seed money) provided to assist in the initial operation of the activity. Thereafter all funds would be plowed back into the club organization or, if excess profits accrued or the club was terminated, deposited to the Central Fund for utilization by other similar activities. The Office of Finance has advised that there are no outstanding Agency loans to self-sustaining personnel service and recreational associations which must be satisfied from CEAF funds.

15. Considering all of these facts, plus the current practice of the Department of States' CCMRF (see tab 3), it is my view that the CEAF may be accurately described as receipts from non-Governmental activities which were transferred to the DDA (as custodian) for use by other non-Governmental activities and not for the use of the United States Government. This Office would recommend, however, that the DDA transfer the authority to control the CEAF monies to a board (similar to that created by the Department of State) to further emphasize the non-Governmental nature of these funds. Such a board, while still retaining

^{4/} We have concluded that as presently drafted, the regulation cannot be fairly read to mean that the DDA is acting in the private capacity when he renders decisions concerning the maintenance, utilization and disposition of CEAF funds. At the very least he is acting as an "official" custodian.

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quasi-Governmental character (since its formation and conduct would be prescribed by Agency regulations and its membership consist of Agency officers and employees), would act in a fiduciary capacity for all Agency employees with respect to the safekeeping and utilization of the central club funds.

RESTRICTION ON THE USE OF CEAF MONIES - PROHIBITION AGAINST AUGMENTATION

STATINTL

16. [] provides that the funds may be used for the general benefit and morale of Agency personnel such as recreational activities, establishment of new self-sustaining activities, or providing financial relief to existing self-sustaining activities. The authorities cited in paragraph 12, however, clearly manifest Congressional intent that Government agencies conduct their activities only with those funds specifically appropriated by Congress for that purpose. Title 31 U.S.C. 628 further restricts use of funds so appropriated to the objects for which they are made.⁵ While the Comptroller General has ruled that expenses which are necessary or incident to the execution of the stated object of the appropriation are proper, such discretion may not go beyond the statute, nor be exercised in conflict with law, nor for accomplishment of purposes unauthorized by the appropriation. 18 Comp. Gen. 285 (1938). It is a well established rule that appropriated funds may not be augmented from another appropriation or other sources unless specifically authorized by law. 26 Comp. Gen. 545 (1947); 2 Comp. Gen. 775 (1923). This rule has been held to apply to even the acceptance of a gift by a Government agency. In 36 Comp. Gen. 268, 269 (1956) the Comptroller General stated:

It is well established that in the absence of specific legislation therefore there is no authority for an official of the Government to accept on behalf of the United States voluntary donations or contributions of cash to augment appropriations made by the Congress for particular purposes.

17. Congress has, on occasion, given specific agencies statutory authority to accept gifts. Most pertinent for our purposes is 40 U.S.C. 298a which provides:

The Administrator of General Services, together with the Postmaster General where his office is concerned, is authorized to accept on behalf of the United States unconditional gifts of real, personal, or other property in aid of any project or function within their respective jurisdictions. (Emphasis added.)

5/ 31 U.S.C. 628 states: "Except as otherwise provided by law, sums appropriated for the various branches of expenditures in the public service shall be applied solely to the objects for which they are respectively made, and for no others."

ADMINISTRATIVE INTERNAL USE ONLY

ADMINISTRATIVE INTERNAL USE ONLY

Similar authority has, however, not been given to the Agency. In the absence of such authority gifts of property or monies must be turned over the the proper Government agency (GSA or Department of Treasury) for disposition. Accordingly, it is our view that any CEAF monies donated to the Agency for whatever purpose must be transferred to miscellaneous receipts.

RESTRICTIONS ON THE USE OF CEAF MONIES - AGENCY REGULATIONS

18. In addition to the restrictions imposed by Title 31 discussed above, one must consider the impact of [] provides that:

...subject to the approval of the Deputy Director for Administration, these funds are used for the general benefit and morale of Agency personnel, such as recreational activities, establishment of new self-sustaining activities, or providing financial relief to existing self-sustaining activities.

This language does not restrict the use of CEAF monies to recreational activities abroad, or conversely, prohibit their use at the Headquarters area or any other domestic Agency post. The entire [] regulation, however, is concerned with the creation and assistance of personnel service or recreational activities at field installations when justified by factors peculiar to the mission of the Agency. While the Headquarters compound technically falls within the definition of a field installation in [] a thorough reading of the entire regulation clearly indicates that the Headquarters compound was not intended to be considered a field installation. Secondly, it is questionable whether the requisite factors prescribed by [] exists, even assuming the Headquarters compound could be characterized as a field installation. [] defines factors peculiar to the mission of the Agency as:

Isolated location of the installation, limited number of Agency personnel at the installation, lack of transportation to commissary or recreational areas, nonavailability of recreational facilities sponsored by the cover activity, security considerations prohibiting attendance at or participation in public recreational activities, etc....

Unless changed, this regulation would, in my view, impose an insurmountable barrier to utilization of the funds as contemplated.

6/ Field installations are defined in [] as, "All Agency installations, both domestic and abroad."

ADMINISTRATIVE INTERNAL USE ONLY

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CONCLUSION

19. In summary, it is the opinion of the undersigned that CEAF monies may be considered to be non-Governmental funds. Secondly, CEAF monies, if donated directly to the Agency, may not be used for constructing physical conditioning facilities, but must be forwarded to the U.S. Treasury for deposit into miscellaneous receipts. Thirdly, the use of CEAF monies to construct physical conditioning facilities at the Headquarters compound would violate the present restrictions in [REDACTED]. Finally, I have concluded that the DCI, in coordination with GSA, may grant to a non-Governmental organization a license to use land on the Headquarters compound for physical conditioning facilities. The CEAF (acting as representative of all Agency employees rather than the DDA) may then wish to donate certain sums to such an organization (or establish their own association) to construct physical conditioning facilities (assuming the [REDACTED] restriction is eliminated).

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SECRET

Approved For Release 2003/06/13 : CIA-RDP81-00142R000500030009-8

21137 1960

MEMORANDUM FOR : Deputy Director (Support)
SUBJECT : Establishment of Central Fund to Receive
Proceeds from Closed Clubs, Messes and
Other Facilities

REFERENCES : (a) [redacted] 25X1A
(b) [redacted]
(c) DIR 03122
(d) OGC Memorandum No. OGC 60-1381

1. This memorandum requests concurrence in the recommendation set forth in paragraph 5 below.

2. The contemplated closing of the [redacted] As
installation has necessitated closing the [redacted]
per reference (a) it was first anticipated that the net
cash balance resulting from liquidation of the Club would
be approximately \$2,500; however, subsequent information
forwarded via reference (b) indicates that the sale of club
property, when accomplished, may raise this figure to approx-
imately \$31,000. In reply to reference (a), Headquarters
forwarded reference (c) advising Chief of Station, [redacted] to
have the [redacted] Club transfer to Headquarters the net cash on
hand as well as proceeds from sale of club property which will
be held in escrow pending establishment of a Central Club Fund.

3. The Office of General Counsel was asked to rule on
the legality of establishing an Agency Central Club Fund with
the proceeds received from the [redacted] Club assets. The Office
of General Counsel has advised (reference (d)) that it per-
ceives no legal objection to the establishment of such a fund.

4. The Department of the Army and the Department of
the Air Force have had in existence for many years non-appro-
priated welfare funds. Financial support of these funds is
derived in part but not limited to a percentage of the profits
from the Army and Air Force exchange and motion picture ser-
vices and from the sale of property remaining when command or
unit non-appropriated fund activities are dissolved. Disburse-
ments from these welfare funds may be made for, but not limited
to, expenses related to sports, recreational, educational,
religious, and welfare programs and activities. The existence
of the Army and Air Force welfare funds provides a precedent
for the establishment of a central fund for clubs, messes and
other facilities in our Agency.

Approved For Release 2003/06/13 : CIA-RDP81-00142R000500030009-8

SECRET

Approved For Release 2003/06/13 : CIA-RDP81-00142R000500030009-8

SUBJECT : Establishment of Central Fund to Receive
Proceeds from Closed Clubs, Messes and
Other Facilities

5. Consistent with the proposed treatment relating to the funds to be derived from liquidation of the [] Club, as previously discussed with you, it is recommended that:

25X1A

- a. The proceeds from the [] Club be utilized to initiate an Agency Central Club Fund;
- b. An interest bearing savings account be established at headquarters through the facilities of the Finance Division, Monetary Branch for cash held on deposit for the Agency Central Club Fund, with interest accruing to the fund; and
- c. Such funds be used for the establishment and financial support of non-appropriated fund activities of the Agency, subject to the prior written approval of the Deputy Director (Support) of each transaction involving the use of such funds until such time as specific policies have been established relating to the control and purpose for which the funds will be used.

25X1A

[]

Acting Comptroller

25X1A

CONCUR:

25X1A

[]

L. K. WHITE

Deputy Director (Support)

29 Nov 60
Date

Distribution:

- 1 Orig & 1 - TAS (*via Crypt*) w/ background
1 - C/FD
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Approved For Release 2003/06/13 : CIA-RDP81-00142R000500030009-8

OGC 60-1381

24 October 1960

MEMORANDUM FOR: Comptroller

SUBJECT : Establishment of a Revolving Fund at Headquarters
for Use in the Establishment of Service and
Recreational Facilities in the Field

STATINTL 1. In connection with the termination of the activities of the
[redacted] Station, there has been made available a sum of money
(\$2,000 - \$3,000) in the form of non-appropriated funds, being the net
profit remaining after the settlement of all club accounts.

2. It has been suggested that this money be used to establish a
revolving fund at Headquarters for future use in the setting up of
recreational and service facilities in other areas. The Office of
General Counsel perceives no legal objection to the establishment of
such a fund inasmuch as it has been determined by Headquarters that it
will be used for the maintenance of morale and efficiency of personnel
living under conditions caused by factors peculiar to the mission of the
Agency.

SIGNED

STATINTL

[redacted]
Assistant General Counsel

cc: DD/S
SSA/DDS
D/Personnel

OGC/OEP:pbc

Distribution:

Orig & 1 - Addressee
1 - DD/S
1 - SSA/DDS
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Approved For Release 2003/06/13 : CIA-RDP81-00142R000500030009-8



STATINTL

TO : Deputy Director for Support
ATTENTION: Regulations Control Staff, Room G-D-15, Headquarters Building
SUBJECT : DRAFT A of Proposed [] Financial Administration

This issuance has been reviewed by the Office of General Counsel
and our position is as follows:

- ☒ CONCUR as to Legality
☐ NONCONCUR as to Legality (memorandum attached)
☐ DCI Authentication is required because (cite specific portion of
regulatory issuances requiring DCI approval and give reasons for
this requirement.)

☒ DCI Authentication is not required

STATINTL

Office of General Counsel

15 July 1964

Date

(Job No. 2987-A-GCT)

Due:

Approved For Release 2003/06/13 : CIA-RDP81-00142R000500030009-8

Tab
1



Approved For Release 2003/06/13 : CIA-RDP81-00142R000500030009-8

UNIFORM STATE/AID/USIA REGULATIONS

500 - Commissary, Mess, and Recreation Facilities

510 GENERAL PROVISIONS

511 Legislation

The Foreign Service Act of 1946, as amended, provides:

"SEC. 921. (a) The Secretary may, under such regulations as he may prescribe, establish and maintain emergency commissary or mess services in such places abroad where, in his judgment, such services are necessary temporarily to insure the effective and efficient performance of the duties and responsibilities of the Service, such services to be available to the officers and employees of all Government agencies located in any such places abroad. Reimbursements incident to the maintenance and operation of commissary or mess service shall be at not less than cost as determined by the Secretary and shall be used as working funds: Provided, That an amount equal to the amount expended for such services shall be covered into the Treasury as miscellaneous receipts.

"(b) The Secretary, under such regulations as he may prescribe, may authorize and assist in the establishment, maintenance, and operation, by officers and employees of the Service, of non-Government-operated commissary and mess services and recreation facilities at posts abroad, including the furnishing of space, utilities, and properties owned or leased by the United States for use by its diplomatic and consular missions. The provisions of the Foreign Service Building Act, 1926, as amended (22 U. S. C. 292-300), may be utilized by the Secretary in providing such assistance. Commissary or mess services and recreation facilities established pursuant to this subsection shall be made available, insofar as practicable, to officers and employees of other Government agencies and their dependents who are stationed abroad. Such services or facilities shall not be established in localities where another United States agency operates similar services or facilities unless the Secretary determines that such additional services or facilities are necessary.

"(c) Notwithstanding the last paragraph under the heading 'Subsistence Department' in the act of March 3, 1911 (10 U. S. C. 1253), or the provisions of any other law, charges at any post abroad by a commissary or mess service or recreation facility authorized or assisted under this section shall be at the same rate for all civilian personnel of the Government serviced thereby, and all charges for supplies furnished to such a service or facility abroad by any Government agency shall be at the same rate as that charged by the furnishing agency to its civilian commissary or mess services or recreation facilities."

512 Applicability of Regulations

*These regulations are applicable to the operation of non-Government-operated commissary and mess services and recreational facilities abroad. They do not apply to emergency commissary and mess services authorized under section 921(a) of the Foreign Service Act of 1946, as amended. *

513 Policy

*Conditions and needs for non-Government-operated commissary, mess, and recreation facilities vary so greatly from one post to another that it is not practicable to establish uniform rules of management for all situations. Consequently, the organization, operation, and supervision of such activities are left to the discretion of the participating employees at individual posts, subject to the provisions of these regulations. *

UNIFORM STATE/AID/USIA REGULATIONS

* Pursuant to the provisions of section 921 (b) of the Foreign Service Act of 1946, as amended, a Central Commissary, Mess, and Recreation Fund has been established in the Department to assist in the establishment, maintenance, and operation of non-Government-operated commissary, mess, and recreation facilities at posts abroad. The Central Fund is capitalized by voluntary contributions from employee associations and uses these contributions to provide financial assistance, primarily in the form of loans. Requests for financial assistance or for policy guidance may be made to the Central Fund by operations memorandum addressed to the Department (A/OPR), subject: ADMINISTRATION. *

514 Delegations of Authority

514.1 Department of State

There is hereby delegated to the principal officer at each post, or his designee, the authority vested in the Secretary of State under section 921 (b) of the Foreign Service Act of 1946, as amended, to be exercised within Departmental directives and the following guidelines:

a. All commissary and recreation facilities overseas shall be employee-association-operated under general standards and criteria established by the Department, except that emergency commissaries and mess facilities established pursuant to section 921(a) of the Foreign Service Act of 1946, as amended, may be organized and operated as the Secretary may direct.

b. The principal officer at each post, after appropriate consultation with heads of other agencies at the post, shall determine the need for and the economic feasibility of each type of service or facility existing or proposed.

c. Normally, funds for the establishment of commissary and recreation facilities are obtained from employees * and become returnable deposits. * Such deposits should be kept to a minimum. They should be limited to the amount required to * maintain * employee interest and participation and to assure the financial integrity of the association. * When justified, the employee association may submit a request for financial assistance to the Central Commissary, Mess, and Recreation Fund. The request should be made by operations memorandum, addressed to the Department (A/OPR), subject: ADMINISTRATION. This assistance will normally be provided in the form of a short-term loan. *

d. The principal officer, or his designee, shall be responsible for monitoring the activities of commissary and recreation associations to assure that the operations of such activities are managed * prudently and in accordance with the policies of the Department and these regulations. *

* e. The Department will provide assistance in locating qualified management personnel. Assistance may also be provided by the Department in establishing military and civilian procurement channels, facilitating transportation services, providing management counsel, and in making periodic audits of the activities. *

f. As each American employee serving overseas is a representative of his country, it is expected that he will at all times present a favorable image of the United States. To assist him, the commissary and recreation association will exert every effort to make available American goods and services to enable him to exemplify the American way of life. * The commissary and other facilities shall, if feasible, stock those items which will enhance this image, including quality American wines and spirits. *

g. Profits from employee associations will be used for welfare and recreational activities. Commissary and recreation associations will make every effort to provide reasonable recreational facilities * if they are inadequate * in the host country.

UNIFORM STATE/AID/USIA REGULATIONS

h. The principal officer may provide to the commissary and recreation association necessary supplies, equipment, utilities, and space for its sales stores, mess, or recreation facilities, in properties owned or leased by the U. S. Government. Customs clearances, local transportation, and other services may also be provided without reimbursement.

i. Principal officers shall assure that commissary and recreation facilities do not adversely affect our public relations with the citizens and officials of the host country and that they do not cause financial embarrassment in the local business community or resentment among local or American business and professional groups.

j. Commissary or mess services and recreation facilities shall not be established in localities where another U. S. agency operates similar services or facilities unless the principal officer of the post determines that they are necessary.

k. Whenever feasible, commissaries must be located on U. S. Government-held property. Physical structures on Government premises shall become the property of the Government at the expiration of the term specified in the permit, or sooner, in the event of liquidation of the association or discontinuance of its use for the purpose approved. If it is necessary for the commissary to be located elsewhere, an inconspicuous place should be selected. * Posts shall refrain from advertising the existence of a commissary through media available to the general public whether in the form of signs, brochures, or other methods. *

l. The services and facilities provided at a post are available to the American personnel and dependents of all civilian and military agencies of the U. S. Government. Contract employees of the U. S. agencies may also be extended these privileges if the privileges are consistent with the laws of the host country and the terms of their employment.

m. Commissary, mess, and recreation privileges may be extended to employees and dependents of local or third-country nationality at the discretion of the principal officer when in accordance with the laws and customs of the host country.

n. The assets of commissary and recreation associations are technically the property of current members. However, such assets have accrued largely through the efforts and contributions of former members and assistance from the U. S. Government. * Therefore, in the liquidation of any commissary, mess, and recreation facilities any surpluses which are over and above the deposits of the employees and any outstanding indebtedness, must be transferred to the Central Commissary, Mess, and Recreation Fund. The transfer may be in the form of a contribution or as a temporary deposit which may be used by the Central Commissary, Mess, and Recreation Fund, but which will be returned to the depositor upon 90 days' written notice. In the event of a reorganization of commissary, mess, and recreation facilities, any surplus funds may be transferred to the new organization. *

o. Employees of commissary, mess, or recreation facilities, while not Government employees, should be extended comparable benefits when possible. U. S. citizen employees are subject to preemployment suitability investigations. The extent of the preemployment investigation of U. S. citizens will be determined by the post's administrative officer * after * consultation with the regional security officer. U. S. citizen dependents of security-cleared U. S. citizen employees will not normally require any type of suitability security investigation. Alien applicants for these positions are subject to the same preemployment inquiries as those required for local employees who are directly employed by a diplomatic or consular post.

p. Budget and fiscal officers, upon authorization of the principal officer, may receive and hold funds of * commissary, mess, and recreation * activities and make payments in connection with their operation in accordance with 4 FAM 300.

q. Charges will be at the same rates for all Government civilian and military personnel serviced by a commissary, mess, or recreation facility.

UNIFORM STATE/AID/USIA REGULATIONS

r. Experience has shown that there are many * service activities that can appropriately be performed * by the employee-operated commissary and recreation associations. * Examples of these activities are: providing temporary living quarters to newly arrived personnel on a rental basis; assistance with residence leasing and termination; rental of automobiles to employees; sales of traveler's checks; clearance of personal goods through customs; and operating a loan fund for local and/or American employees. This partial listing is not intended to prohibit other beneficial service activities which the employee association may wish to provide, as long as these activities do not contravene local or U.S. laws or regulations, are in the public interest, and have the approval of the principal officer. *

514.2 A.I.D. and USIA

When the Department of State principal officer has authorized the establishment of commissary, mess, or recreation facilities, the U.S.A. I.D. mission director or the U.S. A. I.D. representative and the USIS public affairs officer are authorized to provide assistance in support of such facilities, including the furnishing of space and utilities, and, on a loan basis, vehicles and other personal property (other than cash) not required for official purposes. Provision of financial assistance, other personal property and personnel, or the establishment of separate or additional facilities must have prior A. I.D. /W or USIA approval as applicable.

515 General Requirements

Great care * and discretion * shall be exercised in the financial management and in the operation of such activities to prevent embarrassment to the Government. The U.S. Government assumes no liability for the obligations of commissary, mess, and recreation activities to third parties or local governments. When Government personnel act as authorized representatives of an employee association, they should carefully avoid * using their official title or position. They should act within their authority as an association representative and should not personally assume responsibility for the obligations of the association. *

516 Minimum Requirements

Principal or administrative officers of the Department of State shall ensure that, as a minimum requirement, the following measures are adopted by employee associations:

- *a. Bond coverage in sufficient amounts by either blanket bond coverage for all association employees or the bonding of all individuals whose job includes the handling of cash or readily converted assets, or whose jobs enable them to bind the association contractually. *
 - b. Adequate insurance coverage of the association's assets, to include public liability, fire, wind, water, and theft.
 - c. Provide officers and trustees of the association and the designee of the principal officer with a monthly statement of assets, *liabilities, and capital * (balance sheet) and monthly statement of operations (profit-and-loss sheet).
- One copy of the employee association balance sheet and one copy of the profit and loss statement are to be forwarded to the Department (A/OPR) by February 15, for the period July 1 to December 31, and by August 15, for the period January 1 to June 30. * These financial reports must show all activities of the association. *
- d. An annual or more frequent audit (including a physical inventory of stock and equipment), by a firm of chartered, certified, or otherwise qualified accountants, or by an audit committee of at least two disinterested U.S. Government employees with accounting experience.

Tab
2



Approved For Release 2003/06/13 : CIA-RDP81-00142R000500030009-8

OGC 76-1800
8 March 1976

MEMORANDUM FOR: Director of Communications

SUBJECT: Watchstander's Club Watch for Boats

REFERENC: Telepouch [] dtd 7 Aug 75

25X1A

1. This Office has reviewed the request contained in the referenced telepouch forwarded by [] of the Audit Staff. It is understood that the Watchstander's Club is a self-sustaining recreational association established under the provisions of [] for personnel assigned to []. The club was originally established with financial assistance in the form of a loan from the Central Employee Activities Fund. A portion of the loan remains outstanding. The equipment in question consists of two 16-foot Boston Whalers with trailers and two used Mac-2, 60-horsepower Johnson outboard engines. This property is currently located in storage at Annapolis, Maryland, awaiting disposition instructions, and is excess to any current Agency operational requirements.

2. The telepouch is a response to a Headquarters reply to an earlier communication from the Chief, [] requesting assistance in acquiring additional boats and motors for recreational purposes. The Headquarters reply advised [] that two 16-foot Boston Whalers, currently excess to Agency requirements, could be made available to the club at "no cost" except transportation. The telepouch indicates the club's acceptance of the offer and its willingness to defray transportation costs.

3. The statutes and regulations governing the transfer or disposal of Government property are found within 40 U.S.C. 471, et seq., as implemented in 41 C.F.R., et seq. These enactments define the status of certain classes of property and identify the procedural steps which must be followed when disposing or transferring such items. The restrictions imposed by these sections do not, in the opinion of this Office, permit the contemplated transfer, unless the transaction is accomplished under the scope of []. This regulation states:

Each executive agency shall, to the maximum extent feasible, reassign property within activities of the agency... when such property is determined to be no longer required for the purpose of the appropriation from which it was purchased or the use to which it has been applied,...

Property transferred in accordance with the above regulation is technically not excess property as defined in [] "Any personal property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof." Agency compliance with this mandate would logically require the exhaustion of all possibilities for the internal use of a specific item of equipment prior to initiating external disposition or transfer action. The remaining question is whether a transfer to the Watchstander's Club or, for that matter, to any personnel service or recreational activity organized under [] qualifies as being "within activities of the agency," as required by [] The resolution of this question requires an analysis of the formal and informal relationship of such clubs to the Agency.

4. [] is the Agency regulation governing the establishment, operation, and termination of personnel service and recreational activities. The extent of support and supervision depends to some degree on whether the activity was established with Agency assistance or is self-sustaining. Though day-to-day supervision is lacking, Agency control is still pervasive, especially with respect to financial matters. The regulation provides for supervision by the chiefs of field installations, the Director of Finance, and the Deputy Director for Support within their particular fields of expertise. Subparagraph c(4) specifically provides that the Deputy Director for Support has the authority to "approve or disapprove recommendations for the creation of new activities, the expansion of existing facilities, the advancing of Agency funds for new or expanded activities, the transfer of a portion of excess accrued profits to the Central Employee Activities Fund, and the use of monies in this fund." Accordingly, it is our opinion that in view of the underlying purpose for the creation of such activities and the extent of Agency regulatory supervision, the Watchstander's Club may be considered an activity within the Agency, as defined in []

5. [] also establishes internal restrictions on the use of Government equipment by personnel service and recreational activities. Subparagraph a(2)(c) provides that "The Agency may furnish without charge to the activity the following: (1) Basic nonexpendable equipment necessary for the operation of the recreational facility, ... (2) Basic furnishings, ... and maintenance and repair services. It further states that such equipment must be recorded on a memorandum receipt. Subparagraph a(3)(b) provides that the Agency may furnish to wholly self-sustaining activities without charge space and utilities, basic furnishings, and the normal cost of the maintenance of such furnishings. The language of the cited subparagraphs

CONFIDENTIAL

25X1 appears to establish internal limitations on the utilization of Government property by personnel service and recreational activities, notwithstanding the mandate contained in [] discussed previously. A literal reading of the language of these two subparagraphs would appear to run contra to the broad policy guidance contained in the Federal regulations cited. We believe such a strict reading to be unwarranted. If one were to strictly follow the language of the cited subparagraphs of [], one might find himself in a situation where the Agency could procure such items with Government funds under the authority of subparagraph a(5) (purchase of minor recreational equipment) but could not transfer property currently within its inventory for the same purpose. It would seem to be entirely inconsistent with the proper management and conservation of Government asset and run contra to the mandate contained within [] requiring the maximum utilization of existing property.

6. It is, therefore, the opinion of this Office that the contemplated transfer of the property described in paragraph 1 of this memorandum is not contrary to law if:

(1) a determination is made that the property is no longer required for the purpose of the appropriation from which it was purchased or the use to which it has been applied, and

(2) the transfer of the property is accounted for and recorded on a memorandum receipt.

[]
Office of General Counsel
Operations and Management Law Division

25X1A cc: [] Audit Staff

OGC:JMH:sl

Distribution:

Original - Addressee

1 - OGC Subj EQUIPMENT & SUPPLIES

1 - JMHSigner

1 - Chrono

1 - c.r. BUILDINGS, GROUNDS, & PROPERTY

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TAD
3



Approved For Release 2003/06/13 : CIA-RDP81-00142R000500030009-8

COMPARISON WITH THE DEPARTMENT OF STATE'S CENTRAL
COMMISSARY, MESS, AND RECREATIONAL FUND (hereinafter CCMRF)

1. Section 921(b) of the Foreign Service Act of 1946, as amended, provides:

(b) The Secretary, under such regulations as he may prescribe, may authorize and assist in the establishment, maintenance, and operation, by officers and employees of the Service, of non-Government-operated commissary and mess services and recreation facilities at posts abroad, including the furnishing of space, utilities, and properties owned or leased by the United States for use by its diplomatic and consular mission. The provisions of the Foreign Service Building Act, 1946, as amended (22 U.S.C. 292-300), may be utilized by the Secretary in providing such assistance. Commissary or mess services and recreational facilities established pursuant to this subsection shall be made available, insofar as practicable, to officers and employees of other Government agencies and their dependents who are stationed abroad. Such services or facilities shall not be established in localities where another United States agency operates similar services or facilities unless the Secretary determines that such additional service or facilities are necessary.

The House of Representative's report on this paragraph sheds some light on the intent of Congress in enacting this authority. The report states:

This section [section 921] also includes authority for the Secretary to assist officers and employees of the Service in the establishment, maintenance, and operation of recreational facilities at posts abroad subject to the same conditions as are applicable to employee-operated commissary and mess services.

*

*

*

It is not the intention of the committee to put the Department in the recreation business. Its purpose is simply to provide the essential amount of support to make it possible for officers and employees to develop effectively reasonable recreation facilities. (Emphasis added.) H.R. Rep. No. 2696, 84 Cong., 2nd Session - 1956, U.S. Code Cong. & Ad. New 3615, 3625.

2. Pursuant to the authority contained in section 921 the Secretary of State promulgated 6 FAM 500 which set forth Department of State policy governing non-Government-operated commissary and mess services and recreational facilities abroad. In addition, this regulation established the CCMRF in the Department to assist in the establishment, maintenance, and operation of such activities.

3. The CCMRF receives funds in the same manner as does the CEAF. 6 FAM 514. It states:

The assets of commissary and recreational associations are technically the property of current members. However, such assets have accrued largely through the efforts of contributions of former members and assistance from the U.S. Government. Therefore, in the liquidation of any commissary, mess, and recreational facilities any surplus which is over and above the deposits of the employees and any outstanding indebtedness, must be transferred to the Central Commissary, Mess, and Recreational Fund.

The CCMRF uses the assets of terminated clubs and voluntary contributions from employee associations to provide financial assistance, primarily in the form of loans, to existing non-Government-operated commissary and mess services or recreational facilities.

4. After examining the legal basis for the Department of State's CCMRF, I initiated inquiries with various offices of the Department of State to determine how they operated in practice. Initially, I talked to Ms. Brenda Saunders (632-1638), Commissary and Recreational Officer, Office of the Deputy Assistant Secretary for Operations, Bureau of Administration. This office is generally responsible for handling matters relating to the CCMRF. Ms. Saunders advised that the CCMRF is administered by 18 individuals who sit on a board. These individuals are selected by virtue of the position they hold (i.e., chief of area, etc.) rather than by election or appointment. They are selected from a cross-section of the various segments within the Department of State. While it is not clear, it appears that these individuals function in an individual capacity when sitting as a member of this board, rather than in their official capacity. The CCMRF has approximately \$600,000 in assets; a substantial portion of which were acquired as a result of the closing of club activities in Southeast Asia. As was to be expected, Ms. Saunders was not completely familiar with the legal status of the funds but did remember hearing comments which suggest that the General Accounting Office and the Department of Treasury succeeded in requiring similar funds to be deposited into miscellaneous receipts in 1952. In her view, this action precipitated the passage of section 921(b) of the Foreign Service Act of 1956 (see paragraph 1). For a more detailed examination of this point, she suggested I contact Mr. Hal Berman (632-0292) of the Office of Legal Advisor, Department of State. I

queried whether the CCMRF ever used to construct commissary or recreational facilities in the United States. She stated that, by statute, use of the fund is restricted to non-Governmental activities abroad.

5. On 3 March 1978 the undersigned discussed the subject of nonappropriated club funds with Mr. Berman. Mr. Berman suggested that the Agency should not acquiesce to a GAO demand to deposit funds received from non-Governmental clubs into miscellaneous receipts. He noted that, on a number of occasions, GAO has attempted to recover CCMRF funds for the Treasury, but has been rebuffed on each occasion. In reply to my specific question, whether he felt that the CCMRF could exist without the statutory authority found in 921(b) of the Foreign Service Act of 1956, Mr. Berman answered with an emphatic yes. While he was unable to provide specific authority to substantiate his answer, he clearly believes and acts as if it is permissible. He noted that with respect to such funds, the Department of State and the GAO have settled on two basic principles. First, the funds derived from such non-Governmental activities must not be used to augment the appropriations of the Department of State, and secondly, any assistance provided by the Department of State personnel must be incidental to their primary duties.

Tab
4





EXECUTIVE OFFICE OF THE PRESIDENT

Approved For Release 2003/06/13 : CIA-RDP81-00142R000500030009-8

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 19 1977

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject: Proposed Real Property Assignment Circular

Attached for your review and comment is a proposed Office of Management and Budget Circular containing policies for controlling the assignment of Federal real property to non-Federal activities.

Policies contained in the proposed circular provide guidance for assigning Federal real property to the following categories of non-Federal users:

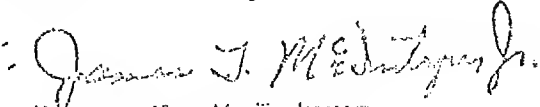
1. Activities that provide services to Federal employees such as cafeterias, employee recreation associations, credit unions, blind stands, and child day care centers.
2. General commercial organizations, e.g., banks, retail stores, and Government contractors.
3. Service and non-profit organizations, e.g., veterans service organizations, State and local governments and national voluntary action programs.

The practices followed by agencies in assigning Federal real property (generally office space) to the above users vary greatly. Some agencies require non-Federal occupants to pay rent while other agencies provide free space. In some instances agencies subsidize day care centers, shopping and other services for their employees while neighboring agencies refrain from such activities. In essence, each agency is making its own policy, and serious conflicts and inconsistencies have developed.

The proposed circular will standardize non-Federal space assignment practices among all agencies. The circular basically requires non-Federal activities that are not exempt by specific statute, to pay equivalent commercial rents for the use of Federal space. Exceptions to the paying policy are permitted only under specific circumstances. Such exceptions have been kept to a minimum in line with the President's goal to balance the budget and improve the efficiency and effectiveness of Government administration.

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Your cooperation in providing any comments you have on the proposed Circular will be appreciated. Questions regarding the Circular may be directed to Mr. Charles W. Clark, Office of Federal Procurement Policy, Office of Management and Budget at 395-6194.


James T. McIntyre
Acting Director

Attachment

MEMORANDUM FOR EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

Subject: Assignment of Federally-Controlled Real Property
to Non-Federal Activities

1. Purpose. This circular establishes executive branch policy pertaining to the use of federally-controlled real property and related services by non-Federal activities.
2. Background. Many non-Federal activities occupy federally-controlled real property. The basic conditions governing the use of federally-controlled real property by a non-Federal activity frequently vary from agency to agency. This circular is intended to bring about greater consistency in the practices of different agencies relative to the assignment of federally-controlled real property to non-Federal activities. The circular is also intended to provide policy guidelines for assessing charges for real property and related services furnished by the Government to non-Federal activities.
3. Applicability and scope. The provisions of the circular apply to all executive departments and independent establishments in the executive branch. The circular does not apply to: (a) the Government of the District of Columbia; (b) non-appropriated fund instrumentalities of the uniformed services; (c) the Veterans' Canteen Service, Veterans Administration; or (d) other

non-appropriated fund activities for which there is a
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statutory authority for the matters covered by the circular.

4. Definitions.

a. Non-Federal activity. Any individual, group, organization or association that is organized, operated or controlled by a private individual(s) or an individual(s) acting outside his official capacity as an officer, employee or agent of the executive branch of the Federal Government.

b. Assignment of real property. The granting to a non-Federal activity of the right to use real property and related services controlled by a Federal agency. This does not include the interim outleasing of excess real property being held by an agency pending transfer or disposition pursuant to 41 CFR Part 101-47.

c. Federally-controlled real property. Land or buildings, including space within buildings and related services owned, leased or provided by the Government. Related services include but are not limited to heat, light, air conditioning, janitorial, telephone, security services, alterations and power.

d. Temporary use. Temporary use of Federal real property means use of the property for a period of 48 hours or less by a non-Federal activity during business or off-duty hours.

a. Community service organization. Any non-profit group, organization or association that is organized and operated to serve the interest of the local community of which the Federal agency is a part. Examples of community service organizations include civic organizations, parent-teacher organizations, 4-H clubs, scouting organizations, and community fund activities.

5. Policy.

a. Assignment of federally-controlled real property to non-Federal activities. Federally-controlled real property that is not in use for authorized Federal programs and which cannot be disposed of in accordance with 41 CFR Part 101-47 may be assigned to a non-Federal activity. Agencies making assignments of real property to non-Federal activities shall ensure that the assignments are not adverse to their mission and are consistent with the public interest. Assignments authorized by law shall be made pursuant to the applicable statutes. Where real property is assigned to non-Federal activities in the absence of particular statutory authority, the agency official making the assignment shall prepare a written statement setting forth all factors pertaining to the assignment. Such written documentation shall be retained for appropriate review in agency files and shall include the basis for making the assignment and the terms and conditions governing the use of the property.

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b. Charges for use of federally-controlled real property. Consistent with the policies contained in Office of Management and Budget Circular A-25, non-Federal activities assigned federally-controlled real property shall be charged for such use of real property. Charges for real property controlled by the General Services Administration (GSA) shall be based on the standard level users charges developed by GSA pursuant to P.L. 92-313, Public Buildings Amendments of 1972 (see Federal Property Management Regulations Subpart 101-21.2). Charges for real property for which standard level user charges have not been established and for real property controlled by agencies other than GSA shall be based on equivalent commercial rents for comparable property and services. Agencies not having "in-house" capability for determining rental values may request advice from the GSA Appraisal Staff by telephoning 202-566-0711.

c. Deposit of revenue. Unless otherwise provided by law, revenues collected from non-Federal activities for the use of federally-controlled real property shall be deposited in miscellaneous receipts in the Treasury.

6. Employee service activities. Policies applicable to non-Federal activities that have as their primary purpose the rendering of goods or services to Federal employees are

a. Employee welfare and recreation associations. Federal agencies, as a rule, do not establish or administer welfare and recreational programs for their employees. However, they often lend encouragement to the voluntary efforts of employees who form associations for recreational and welfare purposes. This encouragement frequently takes the form of assigning Federal real property to the associations either on a temporary or long-term basis. Determinations regarding assignments to employee associations shall be made on a case-by-case basis by appropriate agency officials. In making determinations regarding the use of real property by employee associations, agencies shall consider: (1) the availability of the real property and the need to minimize non-essential assignments; (2) the purpose for which the employees association will use the property; and (3) the consistency of the association's mission with the mission of the agency and the association's overall contribution to the welfare and morale of the agency's work force.

(1) Charges. Charges for the use of real property assigned to employee associations shall be assessed in accordance with paragraph 5b. However, such charges may be waived or reduced where an association's use of real property does not interfere with the Government's use and does not result in the Government incurring additional expenses.

(2) Agency overview responsibilities. Agencies are

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responsible for assuring that welfare and recreation activities utilizing Federal real property comply with non-discrimination, conflict of interest, equal employment opportunity and other appropriate standards and criteria prescribed by the Civil Service Commission or other agencies. Agencies shall not assign space to, or allow continued occupancy of space by, activities that violate specified standards or criteria.

b. Credit unions. The Federal Credit Union Act (12 U.S.C. 1770) provides that duly organized and constituted credit unions may occupy federally-controlled space if such space is available in the community or district where the credit union does business. The act states that an agency may in "its discretion allot space to such credit union if space is available, without charge for rent or services."

c. Blind vending facilities. The Randolph-Sheppard Act, as amended, 20 U.S.C. 107 et. seq., provides that, whenever feasible, one or more vending facilities are to be established on Federal real property to the extent that such facilities will not adversely affect the interests of the United States. Under the provisions of the Randolph-Sheppard Act, blind persons licensed by state agencies are to be given priority in the operation of vending facilities on Federal real property. Vending facilities are defined in the Act to include automatic vending machines, cafeterias, snack bars, cart service, shelters and counters. Blind

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vendors shall not be charged for Government space. Utilities and other services may be provided by the assigning agency without charge.

d. Concessions. Federally-controlled real property may be assigned on a concession basis to commercial activities that provide services to Federal employees. Prior to making such assignments the agency controlling the real property must determine that the service to be provided by the concession is required to maintain the welfare and morale of employees and that adequate alternative facilities offering the same or similar services are not reasonably accessible to the employees. Concessionaires shall be required to pay equivalent commercial rents for the use of federally-controlled real property. Concessions as referenced in this circular are limited to activities providing services primarily to Federal employees convenient to the work site; this does not include concessions in national parks or other high visitor facilities that provide services primarily for the public.

e. Labor organizations. Section 23, Executive Order 11491, as amended, Labor Management Relations in the Federal Service, provides that each agency shall issue appropriate policies with respect to the use of agency facilities by labor organizations. Accordingly, determinations as to occupancy or use of federally-controlled real property by labor organizations and the terms and conditions relative thereto are governed by agency policies and are not subject

f. Day care centers. Day care centers for children of Federal employees shall not be established in Federal space except where the agency head has determined that the facilities are essential to the efficient operation of the agency. Where such determinations are made, the fees charged to parents for using the centers shall be sufficient to recapture the Government's full cost of providing the services. Costs to be recovered by agencies providing day care services include but are not limited to the value of the space as determined in accordance with paragraph 5b above, and all amounts expended for space alterations and renovations, equipment, furniture, supplies, utilities, maintenance and custodial services, and staffing.

7. General Commercial Organizations. In addition to organizations that provide services primarily to Federal employees, it is sometimes necessary and advantageous for an agency to assign real property to commercial firms or other organizations that provide services to the general public, specific sectors thereof, or to other Government agencies.

a. Charges. When real property is assigned to commercial organizations, the organizations shall be required to pay for the property as provided for in paragraph 5b.

b. Government contractors. Agencies having appropriate legal authority may permit persons or firms under contract to the Government to occupy federally-controlled real property.

the real property may be occupied without the payment of rent, provided the terms and conditions of the occupancy are specified in the contract and provided further that the requirement for the payment of rent would result in an equivalent add-on to the Government's price for the contract.

8. Specific organizations.

a. Veterans' service organizations. Pursuant to 38 U.S.C. 3402 the Administrator of Veterans Affairs may, in his discretion, furnish, if available, space and office facilities for the use of the American Red Cross and paid full time representatives of veterans' service organizations recognized by the Veterans Administration pursuant to its governing laws and regulations. Space provided to veteran service organizations will be without charge.

b. State and local governments. Federally-controlled real property that is not required for Federal programs and which cannot be disposed of, may be assigned to units of State or local governments. Such assignments shall be made at the discretion of the controlling agency and shall require the payment of fair charges. In determining the amount State and local governments shall be charged for the use of Federal real property, the controlling Federal agency shall take into consideration any benefits which may accrue to the United States from such occupancy and appropriate adjustments may be made particularly where reciprocal agreements provide for Federal occupancy of State or local real property.

c. National voluntary action programs. Consistent with Executive Order 11805 real property may be used by volunteer organizations for meetings, training programs and similar purposes, when it will not interfere with the Government's intended use of the facilities. National voluntary action programs will not be required to pay equivalent commercial rents; however, all costs, specifically incurred by the Government as a result of the organizations' use of the space shall be recovered.

9. Temporary use by a non-Federal activity. Upon approval of the controlling agency, Federal real property such as conference rooms, hearing rooms, training rooms, auditoriums and cafeterias may be used by employee groups, community service organizations, or similar type activities for meetings or other purposes on a temporary basis. Generally, such use shall not be scheduled beyond normal building operating hours nor for Saturdays, Sundays, holidays or other times when the facility is normally closed, without appropriate reimbursement for services. Activities using Federal real property on a temporary basis shall pay the Government for extra costs incurred by the Government, (utilities, maintenance, protection, and other provided services) as a result of the activities' use of the property.

10. Easements and other outgrants. Agencies having appropriate legal authority may convey easements and other interests in

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real property under their control to non-Federal activities for rights-of-way and similar uses. Such conveyances should be made only if they are in the public interest and are not adverse to agencies' missions. Rights-of-way and similar conveyances should normally not be made at less than the appraised fair market value of the conveyed interest.

II. Responsibilities.

a. Agencies. The Administrator of General Services will promulgate such regulations as are necessary for implementing the circular in real property controlled by the General Services Administration (GSA). Agencies, other than GSA, will promulgate regulations for implementing the circular in real property under their control. Any requests for exceptions to the circular should be forwarded to the Administrator of General Services for activities occupying GSA controlled property and to the Director, Office of Management and Budget for all other activities.

b. Existing contracts. Contracts existing as of the date of this circular which provide for the assignment of federally-controlled real property or the providing of related services to non-Federal activities shall be amended to the extent feasible to comply with the policies contained herein. Contracts entered into, renewed or extended after the date of the circular shall incorporate the prescribed policies.

12. ~~Approved For Release 2003/06/13 : CIA-RDP81-00142R000500030009-8~~ of this circular should be directed to the Office of Management and Budget, telephone 395-6194 (code 103).

Director

MEMORANDUM FOR: Chief, General and Services Division, AF

FROM:

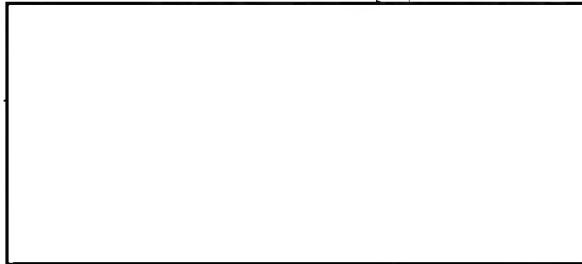
[REDACTED]
Chief, Logistics Services Division, OL

SUBJECT:

Day Care Center (DCC)

Ernie,

Transmitted herewith is a memorandum from the Chief, Real Estate and Construction Division, OL which is in response to Admiral Turner's question on the feasibility of constructing a building on the Headquarters compound for a DCC.



Att

STATINTL

19 JAN 1978

MEMORANDUM FOR: Chief, Logistics Services Division, OL

FROM:

[REDACTED]
Chief, Real Estate and Construction Division,
OL

SUBJECT: Day Care Center

REFERENCE: Memo for C/RECD/OL, fr C/LSD/OL, dtd 11 Jan 78,
Same Subject

1. We have, with the assistance of your Architectural Design Staff, made a quick study of the costs and siting of a small building on the Headquarters compound to accommodate a Day Care Center. Attached are a Summary of Costs, a sketch of the proposed site, and a rough drawing of the proposed building.

2. There are additional considerations which must be taken into account during the decision making process. Paramount is the requirement to obtain approval from the National Capital Planning Commission and the filing of an environmental impact statement. It is considered probable that Fairfax County and the neighboring community will desire to comment on the proposal to construct such a facility. While not an immediate threat, there is a regulation now being circulated for comment by OMB which, when implemented, will require organizations, concessionaires, or other non-federal activities, to reimburse the government at the current SLUC rate for real property owned or controlled by the US Government and used for such non-federal activities. Day Care Centers are specifically included in the proposed OMB Circular. At today's rate, this would increase the annual operating expense of the proposed center by \$40,464.

3. The cost quoted is of course an estimate but even this figure will, after 1 February 1978, be subject to inflation at the rate of approximately 1 percent per month. Should you, or the cognizant office have further questions, please contact

[REDACTED]

STATINTL

[REDACTED]

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SUMMARY SHEETSITE WORK:

Clearing and Grubbing	\$ 1,095
Compacting	105
Fine Grading	1,012
Parking Facility	6,993
Access Road	11,122
Utility Trench	7,088
Outdoor Play Area	2,111
Fence for Play Area	3,660

BUILDING:

4800 ft ² X \$35/sf	168,000
Air Conditioning = 10.9%	<u>18,312</u>
	219,498
Contingency 10%	21,950
A/E Fee 6%	13,170
GSA Fee 28%	<u>61,459</u>
	316,077

MISCELLANEOUS:

Classroom Furniture	10,000
Playground Equipment	<u>10,000</u>
	\$336,077

SALIENT POINTS:

The selected site reflects a judgment based on a quick review of possible sites.

The nature of the facility might conflict with zoning for the area.

Any construction of this nature will need to be subjected to an environmental assessment and possibly an impact statement.

The National Capital Planning Commission will have to be given an opportunity to review and comment.

Public notification and public hearings are a probable requirement.

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